REMARKS

By this Amendment, Applicant amends claims 1, 10, 11, and 15. Claims 1-12 and 15 remain pending in this application.

In the Office Action[1], the Examiner took the following actions:

> rejected claim 10 under 35 U.S.C. § 112, second paragraph;

> rejected claims 1-10 under 35 U.S.C. § 101;

> rejected claims 1-4, 7-12, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Stowell et al. (U.S. Patent Application Publication No. 2002/0099579) in view of Gill (U.S. Patent No. 6,947,951); and

> rejected claims 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Stowell, Gill, and Tsai et al. ("Distributed Iterative Aggregation Algorithms for Box-Constrained Minimization Problems and Optimal Routing in Data Networks").

I.   Rejection of Claim 10 under § 112, ¶2

Although Applicant respectfully traverses the rejection of claim 10 under 35 U.S.C. § 101, in an effort to expedite prosecution, Applicant has amended claim 10 for further clarity. Accordingly, submits that the amended claim is definite, and Applicant requests the Examiner to reconsider and withdraw the rejection of claim 10 under § 112, second paragraph.

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[1] The Office Action may contain a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

II.   Rejection of Claims 1-10 under § 101

Although Applicant respectfully traverses the rejection of claim 1-10 under 35 U.S.C. § 101, in an effort to expedite prosecution, Applicant has amended independent claim 1 to tie elements of the claim to a processor. Accordingly, independent claim 1 is tied to a machine and recites statutory subject matter for at least this reason. Claims 2-10 depend from independent claim 1 and recite statutory subject matter at least due to their dependence. Therefore, Applicant requests the Examiner to reconsider and withdraw the rejection of claims 1-10 under § 101.

III.   Rejections of Claims 1-12 and 15 under § 103

Applicant respectfully traverses the rejection claims 1-4, 7-12, and 15 under 35 U.S.C. § 103(a) as being unpatentable over <u>Stowell</u> in view of <u>Gill</u>; and the rejection of claims 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over <u>Stowell</u>, <u>Gill</u>, and <u>Tsai</u>. A *prima facie* case of obviousness has not been established for at least the following reasons.

"The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements." M.P.E.P. § 2142, 8th Ed., Rev. 7 (July 2008) (internal citation and inner quotation omitted). "[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the

prior art." M.P.E.P. § 2141(II). In rejecting a claim, "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III). Here, a *prima facie* case of obviousness has not been established because the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and Applicant's claims.

Independent claim 1, as amended, recites a computer-implemented method of planning demand for a configurable product having at least one product dependent characteristic and one product independent characteristic in a managed supply chain including, among other things, "providing a data storage system to store data with respect to a plurality of product independent characteristics and product dependent characteristics" and "performing . . . a calculation on the data with respect to the product dependent characteristics and the product independent characteristics." Stowell, Gill, and Tsai, individually or in combination, do not disclose or suggest at least these elements.

Stowell does not disclose or suggest "providing a data storage system to store data with respect to a plurality of **product independent characteristics and product dependent characteristics**" (emphases added). The Office Action points to paragraph [0065] of Stowell regarding this element, but Stowell does not disclose or suggest storing data for a plurality of product independent characteristics and product dependent characteristics. Rather, Stowell discloses a "partner directory [that] may include details regarding the products and services offered by the partner" and "an entity that participates may have different preferences as to the characteristics that are most

important to that enterprise." Stowell, para. [0065]. As examples, Stowell discloses that "one enterprise may find that timely delivery is the most critical performance indicator whereas another entity may be most concerned with the percentages of defects received in the supply." Id. However, neither a delivery time nor a percentage of defects received in a supply constitute a characteristic that is dependent upon a particular product. For example, as described in Applicant's specification,"[t]he configurable products to be planned for include product independent characteristics 2, 3, 4, such as sales region 2, customer channel 3 and products 4, and product dependent characteristics 5, 6 such as colour 5, which include red R, green G and blue B and engine size 6, which include 1.8. 2.0 and 2.2 litres." Specification at page 5, lines 3-7.[2] Accordingly, Stowell does not disclose or suggest "providing a data storage system to store data with respect to a plurality of product independent characteristics and product dependent characteristics," as recited in independent claim 1.

Moreover, because Stowell does not disclose or suggest storing data for a plurality of product independent characteristics and product dependent characteristics, Stowell also does not disclose or suggest "performing . . . a calculation on the data with respect to the product dependent characteristics and the product independent characteristics," as additionally recited in independent claim 1. Even if the Examiner is

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[2] In making the various references to the specification and drawings set forth herein, it is to be understood that Applicant is in no way intending to limit the scope of the claims to the exemplary embodiments shown in the drawings and described in the specification. Rather, Applicant expressly affirms that he is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation and applicable case law.

correct in characterizing <u>Stowell</u> as disclosing data for a plurality of product independent characteristics and product dependent characteristics, which Applicant submits is incorrect for the reasons above, <u>Stowell</u> nevertheless does not disclose or suggest "performing . . . a calculation on the data with respect to the product dependent characteristics and the product independent characteristics." The Office Action cites to paragraphs [0137] and [0138] of <u>Stowell</u> regarding this element, however, these paragraphs relate to a "Metrics Manager [that] manages the lifecycle of metrics modules . . . [and] coordinates the flow of information to and from metrics modules based upon events that have been registered against objects (partners, locations and items)" and an "Analytics Manager [that] looks forward to predict and recommend courses of action based on pattern recognition technologies and analytical approaches." See <u>Stowell</u>, paras. [0137] and [0138]. Accordingly, these paragraphs are silent as to performing the claimed "calculation," which is performed with respect to the claimed "product dependent characteristics and the product independent characteristics."

     <u>Gill</u> does not compensate for the deficiencies of <u>Stowell</u>, which were discussed above, and the Office Action does not rely on the reference to do so. Furthermore, even if the Examiner's allegations regarding <u>Gill</u> are correct, which Applicant does not concede, <u>Gill</u> does not teach or suggest "providing a data storage system to store data with respect to a plurality of product independent characteristics and product dependent characteristics" and "performing . . . a calculation on the data with respect to the product dependent characteristics and the product independent characteristics," as recited in independent claim 1.

The Examiner cited <u>Tsai</u> regarding dependent claims 5 and 6. Even if the Examiner's allegations regarding <u>Tsai</u> are correct, which Applicant does not concede, <u>Tsai</u> does not compensate for the deficiencies of <u>Stowell</u> and <u>Gill</u>, discussed above. That is, <u>Tsai</u> also does not disclose or suggest "providing a data storage system to store data with respect to a plurality of product independent characteristics and product dependent characteristics" and "performing . . . a calculation on the data with respect to the product dependent characteristics and the product independent characteristics," as recited in independent claim 1.

In view of at least these deficiencies of <u>Stowell</u>, <u>Gill</u>, and <u>Tsai</u>, as set forth above, the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the claim and the prior art. Moreover, no reason has been articulated as to how one of ordinary skill in the art would modify the disclosures of the cited references to arrive at Applicant's claimed combination. Therefore, no reason has been clearly articulated as to why independent claim 1 and claims 2-10, which depend from independent claim 1, would have been obvious to one of ordinary skill in view of the cited references and the rejection of these claims under 35 U.S.C. § 103(a) should be withdrawn.

Independent claims 11 and 15, although of a different scope from independent claim 1 and each other, include recitations similar to those discussed above in connection with independent claim 1. Accordingly, independent claims 11 and 15, and claim 12, which depends from independent claim 11, are not obvious in view of the cited references for at least the reasons discussed above, Therefore, the Examiner should withdraw the rejections under 35 U.S.C. § 103(a).
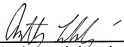
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IV.   <u>Conclusion</u>

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of this application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 11, 2011   By:_____
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